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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/967,109	09/28/2001	Trevor Vernon Smith	3120.00026	8086

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10/29/2003

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EXAMINER

LEGESSE, NINI F

ART UNIT

PAPER NUMBER

3711

DATE MAILED: 10/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/967,109

Applicant(s)

SMITH, TREVOR VERNON

Examiner

Nini F. Legesse

Art Unit

3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

NFC 10/30/03

- 1) ☒ Responsive to communication(s) filed on 28 September 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24, 27 and 28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Applicant's amendment to claims 8 and 10 and response to the office action of 04/17/03 is acknowledged in paper no. 15.

#### ***Drawings***

The drawings stand objected to under 37 CFR 1.83(a) because they fail to show how the position indicator arm is attached to the shoulder pad including the ball and socket joint and the locking means as disclosed on page 3 of the specification.

- A locking means as disclosed in claim 10 is not shown in any of the drawings;
- A ball and socket joint as disclosed in claim 11 is not shown in any of the drawings.

Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

The amendment to the drawing filed on 07/15/02 in paper no. 8 is not entered because it introduces new matter into the drawing.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-10 and 12-24** are rejected under 35 U.S.C. 103(a) as being unpatentable over Mingo (US Patent No. 5,890,968) in view of Cole (US Patent No. 5,919,097), Lazier (US Patent NO. 5,785,603), and Oppenheimer (GB 1,322,274).

Mingo discloses a golf swing-training device (Fig. 1) comprising:

- An attachment means (20,30) for attaching a support member (40) adjacent to a shoulder of a golfer, the support member (40) having shoulder position indicator means and the golf training aid is used for indicating the shoulder turn during a takeaway in the back swing (column 3, lines 40-58);
- The shoulder position indicator means (10) is adjustably secured to the support member (since hook and loop fastening pairs are used as indicated in column 2, lines 58-60, it can be concluded that the position indicator is adjustable);
- The shoulder position indicator means (10) comprises a first indicator member that is supported by the indicator arm (referring to Figs. 1-2, the first indicator member is considered to be the left end of item 10) and a second indicator member located adjacent to the shoulder of the golfer (referring to Fig. 1-2, the second indicator member is considered to be the right end of item 10); and
- The support member is located over the forward shoulder of the golfer relative to the swing (Fig. 1); and
- Wherein the indicator comprises a resilient member (for example, in column 4, lines 18-24 indicates that the indicator element could be rubber).

Mingo fails to include position indicator means that projects outwardly from the golfer's shoulder. However the Cole, Lazier, and the Oppenheimer references teach the use of an indicator means that project outwardly from a golfers body. With respect to Cole refer to Figs. 1-3 item 22. With respect to Lazier, refer to Fig. 5, item 30 and 76. And with respect to Oppenheimer refer to Fig. A item 16. Thus it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide additional element that projects outwardly from a golfers body as taught by Cole, Lazier and Oppenheimer in the Mingo device so that the golfer could clearly see if he has achieved proper swings and proper rotation of the torso and the shoulders.

**With respect to claims 8 and 10**, Lazier discloses a pivotally secured means (Figs. 1-7) and a locking means (66). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a pivotally secured support member with a locking means as disclosed by Lazier in order to secure the additional shoulder position indicator to any position.

**With respect to claims 16-18 and 20**, Cole discloses strap (16) and a pad element (14), Stawicki discloses a harness (12) and also, Lazier discloses a harness (20). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a harness and a pad as taught with the references cited above in place of the shirt like garment (40) as shown by Mingo in order to reduce manufacturing cost and the use of padding will provide comfort to the user.

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With respect to claims 21-24, it appears that these claims are directed to the obvious steps of using the Mingo in view of Cole, Lazier, and Oppenheimer references of a golf swing training aid.

Claims 11, 27, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1-7 above, and further in view of Stawicki (US Patent No. 5,150,901).

The references as applied to the above claims fail to disclose a ball and socket joint, an indicator means that can be moved in at least two planes wherein said at least two planes are perpendicular to each other. Stawicki discloses a ball (44) and socket (46) joint that can be moved in at least two planes wherein said at least two planes are perpendicular to each other (for example refer to Fig. 2). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a ball and socket joint as taught by Stawicki in the references as applied to claims 1-7, device in order to practice the correct swing for striking a golf ball for any particular golf shot.

#### ***Response to Arguments***


Applicant's arguments with respect to claims 1-24, 27 and 28 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nini F. Legesse whose telephone number is (703) 605-1233. The examiner can normally be reached on 9:30 AM - 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Sewell can be reached on (703) 308-2126. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 872-9301.



**STEPHEN BLAU**  
**PRIMARY EXAMINER**

NFL  
10/21/03